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SUBJECT: PRIVATE TV OWNERS DECRY NEW GOV TAX

Classified By: Ambassador Charles S. Shapiro; reasons 1.4 (B) and (C)

Summary

1. (U) National tax collection agency SENIAT has ordered Venezuela's four leading television channels to pay SENIAT almost USD 3.3 million in taxes for allegedly donated spots during the December 2002-February 2003 opposition-sponsored national strike. Globovision, RCTV, Venevision, and Televen owners and legal executives assert that their respective channels have paid all required taxes and that the Venezuelan government (GOV) is punishing the media for criticizing the GOV. The stations will appeal the SENIAT orders based on legal arguments that the spots were public service announcements, not donations, and thus exempt from taxes on donations. Some business and media executives believe SENIAT probably has a case. That said, everyone understands that the GOV is both punishing the opposition private media and issuing them a warning. End Summary.

Fair Tax, or a Tax on Freedom of Expression?

2. (U) On March 19, Venezuela's national tax collection agency, SENIAT, ordered Venezuela's four leading television channels to pay SENIAT almost USD 3.3 million in taxes (exchange rate BS 1,920 per USD). SENIAT claims that these new taxes are for a number of spots the channels donated to the opposition during the December 2002-February 2003 opposition-sponsored national strike. SENIAT is taxing national 24-hour news channel Globovision the equivalent of USD 1.1 million; Radio Caracas TV (RCTV) USD 1.0 million; Venevision USD 781,000; and Televen USD 302,000.

3. (C) Globovision, RCTV, Televen, and Venevision executives assert that SENIAT's motives are political, a response to direct orders from President Chavez and Communication Minister Jesse Chacon to bankrupt these opposition-leaning stations if they refuse to toe the Venezuelan government's revolutionary line. On March 19, RCTV President Marcel Granier accused the GOV of attempting to quash freedom of expression through the imposition of illegal and unfair taxes. RCTV Legal Vice President Oswaldo Quintana told IO on March 22 that the GOV was trying to impose a non-existent tax against political pluralism, specifically to discourage any messages against the Chavez government. Globovision manager Edith Ruiz opined that the SENIAT order was a tax on the freedom of expression. Televen's Corporate Vice President Enrique Alvarado blasted the SENIAT decision, terming it an unabashed political maneuver directed at pressuring the private media to stop supporting the opposition. Venevision's Legal Vice President, Maria Ines Loscher, echoed Quintana's assertion, adding that this was the GOV inquisition's latest step against the media.

4. (C) All four stations will appeal the SENIAT orders. According to Loscher and Quintana, the spots the channels provided were public service announcements, not donations, and therefore exempt from taxes on donations. Further, if SENIAT were to insist that the spots were donations, while donations of material goods are subject to additional taxation in accordance with Venezuela's 1999 Law on Inheritance and Donations, donations of services are not taxable. Even in the worst-case scenario, in which SENIAT persisted in terming the spots donations, and it ignored the fact that the spots were services rather than goods or property, according to the 1999 law, the recipients, not the donors, are expected to pay taxes on donations received, argued Quintana. (Comment: Quintana also acknowledged, however, that the donor must pay the donation tax if the beneficiary cannot pay it. End Comment.)

5. (C) According to Quintana and Loscher, SENIAT employees had started investigating the four channels about eight months ago, so this latest GOV maneuver did not come as a surprise. Loscher explained that these spots had no commercial value. Venevision granted the airtime in large

part because few companies placed paid ads on TV during the strike. Following SENIAT logic, announcements calling for blood or medicine donations would also be subject to taxation, opined Alvarado. Further, to the station

executives' knowledge, SENIAT was not applying the same tax guidelines on state television stations Venezolana de Television (VTV) and VIVE TV; more reason to believe SENIAT's motives were political.

16. (C) Globovision executive Edith Ruiz noted that the channels had also provided hundreds of hours of airtime for the GOV's public service announcements. These included spots on the constitutional and constituent assembly referendum processes; for the national children's Foundations (Fundacion del Nino); national vaccination campaigns; Ministry of Defense social programs, among others. SENIAT had not imposed a donation tax on any of these pro-GOV spots, claimed Ruiz. To Quintana, it was clear that the GOV was exclusively targeting public service that it considered pro-opposition, including an hour-long December 2002 Mass for Peace during the height of the national strike.

Another Perspective

17. (C) Though television owners and executives were unequivocal in their assertions that these spots were public service announcements, not donations, and that there was no law that imposed a tax on public service announcements, national phone company CANTV President and former Education Minister Gustavo Roosen told Ambassador March 19 that if he were SENIAT director, he would go after media owners for the value added tax (IVA) on the donated ads because the law is quite clear on this point, and has been since he was a minister some 15 years ago. Owner of national daily "El Universal," Andres Mata told Ambassador sometime after the national labor strike ended in February 2003 that that he had been careful to pay the IVA on ads he had given to the CD because it is the law. He also noted that many of his fellow media owners were not doing the same and he told Ambassador that it was a mistake that would open them up to legal action since it quite clearly was the law. "El Universal" editors told IO March 24 that the TV channels were skating on thin legal ice, especially in light of the current government's campaign to find whatever means to subject the private media to its revolution. Though the papers, including "El Universal," were less likely than broadcast media to provide free space, when "El Universal" did so, as a precautionary appeal. Even with an appeal, however, the channels could be subject to fines of up to 100 percent of the quoted tax value, plus interest. In Venevision's case, the total "damage" could reach almost USD 2 million. Even worse, if the channels lose their appeals and pay, it will set a dangerous, unaffordable precedent because the GOV is sure to then impose taxes on the channels for all free or donated spots over the past five years of the government. Further, the GOV could apply the same tax regime on regional television channels, private radio stations, and print media, and ultimately, Venezuela's Organic Tax Law would permit the GOV to seize the assets of delinquent channels, warned Alvarado.

Comment

19. (C) While the lawyers argue over the legality of this tax bill, it is clear that the GOV perceives these four channels as part of what they term a "conspiracy" against the government, and the GOV will use every means possible to try to intimidate these channels. So far the GOV has stopped short of censorship or talking the channels off the air. These tax bills are warnings. For now, this most recent threat appears to have made station owners and executives even more determined to continue allowing ample space for the opposition's views.
SHAPIRO

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